



September 19, 2018

VIA ELECTRONIC FILING

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, District of Columbia 20554

RE: Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, WC Docket No. 17-84; Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment, WT Docket No. 17-79

Dear Ms. Dortch:

The City of Kirkland, Washington, writes to express its concerns about the Federal Communications Commission's proposed Declaratory Ruling and Third Report and Order regarding state and local governance of small cell wireless infrastructure deployment. Kirkland is a waterfront city along the shores of Lake Washington, on the eastside of Seattle. Kirkland supports many businesses, including businesses in the technology industry, and is the home of one of Washington's Google Campuses. Kirkland borders Redmond, where both Microsoft and Nintendo are located. Kirkland also has many residential neighborhoods, each with its own history and character, and a thriving downtown business center. In other words, Kirkland is the kind of city that very much wants to welcome and support small cell wireless infrastructure; but the City is also the guardian of the City's rights-of-way.

Kirkland appreciates the Commission's efforts to engage with local governments on this issue. Although we share the Commission's goal of ensuring the growth of cutting-edge broadband services for all Americans, we remain deeply concerned about several provisions of this proposal. Local governments have an important responsibility – a constitutionally mandated responsibility – to protect the health, safety and welfare of residents, and we are concerned that these preemption measures compromise that traditional authority and, in addition, expose wireless infrastructure providers to unnecessary liability.

- **The FCC's proposed new collocation shot clock category is too extreme.** The proposal designates any preexisting structure, regardless of its design or suitability for attaching wireless equipment, as eligible for this new expedited 60 day shot clock. When paired with the FCC's previous decision exempting small wireless facilities from federal historic and environmental review, this places an

unreasonable burden on local governments to protect historic preservation and prevent harm in the form of environmental or safety concerns to the community. The addition of up to three cubic feet of antenna and 28 cubic feet of additional equipment to a structure not originally designed to carry that equipment is substantial and may necessitate more review than the FCC has allowed in its proposal.

- **The FCC's proposal does not address suitability of city facilities to accept equipment.** Many of Kirkland's current light poles are not designed to support small cell equipment. These will have to be replaced in order to accommodate the small cell facilities defined in the order. Kirkland is partway through the process of developing a suitable policy that requires replacement of poles at the expense of the telecommunications companies who want to use them so that Kirkland taxpayers do not have to bear the cost of replacement. Furthermore, based upon safety concerns, the City is not allowing the installation of small cell facilities – or any other utility facilities – on City traffic poles. The City is not certain such disallowance is allowed under the new order. If not, then Kirkland foresees very serious safety concerns that will flow from the order as currently drafted.
- **The FCC's proposed definition of "effective prohibition" is overly broad.** The draft report and order proposes a definition of "effective prohibition" that invites challenges to long-standing local rights of way requirements unless they meet a subjective and unclear set of guidelines. While the Commission may have intended to preserve local review, this framing and definition of effective prohibition opens local governments to the likelihood of more, not less, conflict and litigation over requirements for aesthetics, spacing, and undergrounding.
- **The FCC's proposed recurring fee structure is an unreasonable overreach that will harm local policy innovation.** We disagree with the FCC's interpretation of "fair and reasonable compensation" as meaning approximately \$270 per small cell site. Local governments share the federal government's goal of ensuring affordable broadband access for every American, regardless of their income level or address. That is why many cities have worked to negotiate fair deals with wireless providers, which may exceed that number or provide additional benefits to the community. Additionally, the Commission has moved away from rate regulation in recent years. Why does it see fit to so narrowly dictate the rates charged by municipalities?

Kirkland has worked with private business to build the best broadband infrastructure possible for our tech industry businesses and residents. We oppose this effort to restrict local authority and stymie local innovation, while limiting the obligations providers have to our community. We urge you to oppose this declaratory ruling and report and order. The declaratory ruling and report and order go too far by giving public right-of-way to for-profit

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corporations below fair market value to the detriment of the public with regard to public finances in addition to safety and aesthetics; they violate the Washington State Constitution's ban against gifting public funds to a private party, as set forth in Art. 8, Sec. 7. Again, we stress that Kirkland wants small cell wireless technology to support its businesses and residents, but not at this cost. There is a reasonable compromise, but this is not it.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Kurt Triplett", with a stylized flourish at the end.

Kurt Triplett
City Manager
City of Kirkland
State of Washington